

REMARKS

Applicants have carefully reviewed the Application in light of the Office Action transmitted September 17, 2008 ("*Office Action*"). Claims 1-31 are pending in the Application, and the Examiner rejects all pending claims. Applicants respectfully request reconsideration of the pending claims and favorable action in this case.

I. Double Patenting

Claims 1, 8, 15, 22, 29, and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 14, 27, 40, 41, 42, 53, and 54 of copending Application No. 10/804,550 in view of U.S. Patent No. 4,663,748 to Karbowski ("*Karbowski*"). As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that the present Application includes allowable subject matter. *See* M.P.E.P. § 804 (subpart I.B.1).

Claims 1, 8, 15, 22, 29, and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 9, 17, 25, and 33 of copending Application No. 10/804,528 (now allowed) in view of *Karbowski*. As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that the present Application includes allowable subject matter. *See* M.P.E.P. § 804 (subpart I.B.1).

II. Rejections under 35 U.S.C. § 102(b)

The Examiner rejects Claims 1, 3, 7, 15, 17, 21, 22, 24, 28, and 29 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,032,185 to Asano ("*Asano*"). Applicants respectfully traverse this rejection and submit that *Asano* does not describe, expressly or inherently, each and every element of the claims.

Consider Applicants' independent Claim 1, which recites:

An optical node comprising:
a data interface operable to receive data for transmission to a plurality
of destinations;
a buffer operable to store the data;

a transmitting unit operable to couple to an optical transmission medium having a plurality of data channels and to selectively transmit optical signals on the data channels; and

a controller operable to receive a token authorizing transmission on one of the data channels, to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data, to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination, and to transmit the data on the authorized data channel in accordance with the transmission allocation and the destination allocation.

Among other aspects, *Asano* fails to disclose a controller operable (1) “to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data;” and (2) “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires.

A. *Asano* fails to describe determining a transmission allocation.

Claim 1 requires a controller operable “to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data.”

As describing these aspects, the *Office Action* relies on *Asano*, block S607 in figure 6 (“Tune variable wavelength filter to wavelength of source station”) and block 337 in fig. 12 (“Packet Length”). *Office Action*, p. 7. These cited aspects of *Asano*, however, fail to describe, teach, or even suggest “determin[ing] . . . an amount of time that the authorized data channel may be utilized to transmit the data,” as Claim 1 requires. Thus, *Asano* does not describe, expressly or inherently, “to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data,” as Claim 1 requires.

Independent Claims 15, 22, and 29 include limitations that, for substantially similar reasons, are not disclosed or suggested by *Asano*. Because *Asano* does not disclose, expressly or inherently, every element of independent Claims 1, 15, 22, and 29, Applicants respectfully request reconsideration and allowance of Claims 1, 15, 22, and 29 and their respective dependent claims.

B. *Asano* fails to describe determining a destination allocation.

Claim 1 requires a controller operable “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination.”

As described in Section A above, *Asano* fails to describe, expressly or inherently, determining a transmission allocation. Accordingly, *Asano* fails to describe “determin[ing] . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination.”

Even if *Asano* did describe determining a transmission allocation, *Asano* fails to describe, teach, or even suggest “determin[ing] . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires. As describing these aspects, the *Office Action* points to *Asano*, block 331 in fig. 12 (“Destination Address”). *Office Action*, p. 7. This cited aspect of *Asano*, however, fails to describe, teach, or even suggest determining a proportion of anything, much less “determin[ing] . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires. Thus, *Asano* does not describe, expressly or inherently, “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires.

Independent Claims 15, 22, and 29 include limitations that, for substantially similar reasons, are not disclosed by *Asano*. Because *Asano* does not disclose, expressly or inherently, every element of independent Claims 1, 15, 22, and 29, Applicants respectfully request reconsideration and allowance of Claims 1, 15, 22, and 29 and their respective dependent claims.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of this Application.

If the Examiner feels prosecution of the present Application may be advanced by a telephone conference, Applicants invite the Examiner to contact the undersigned attorney at (214) 953-6951.

Although no fees are believed to be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'K-P', followed by a horizontal line.

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